

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of)	MAIL STOP Amendment
)	
Shioupyn SHEN)	Group Art Unit: 2168
)	
Application No.: 10/808,326)	Examiner: G. Smith
)	
Filed: March 25, 2004)	
)	
For: DOCUMENT NEAR-DUPLICATE)	
DETECTION)	

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTEMENT

U.S. Patent and Trademark Office
Customer Service Window, Mail Stop IF
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Sir:

Applicants request adjustment of the patent term adjustment (PTA) calculated by the Office. The Office calculated the PTA as follows:

USPTO (A) Delay (days): 819
Three Years (B) Delay (days): --
Applicant Delay (days): 31
Total Patent Term Adjustment (days): 788

Applicants respectfully submit that method used to calculate the PTA above has been ruled to be in violation of 35 U.S.C. § 154, by the United States District Court for the District of Columbia. See *Wyeth v. Dudas*, No. 07-1492 (D.D.C. September 30, 2008). The Wyeth court ordered the Office to add the "USPTO Delay" under 35 U.S.C. § 154(b)(1)(A) to the "Three Years" under 35 U.S.C. § 154(b)(1)(B) and then subtract the Applicant Delay to determine the total PTA.

The correct calculation of the PTA is as follows:

USPTO (A) Delay (days): 819

Three Years (B) Delay (days): 455 (Total amount of 605 days minus 150 overlapping A delay between 03/25/2007 and 08/22/2007)

Applicant Delay (days): 31

Total Patent Term Adjustment (days): 1243

In this case, the Office has not credited the applicant with any Three Years PTA under 35 U.S.C. § 154(b)(1)(B), which is an erroneous calculation under the Wyeth holding that the Office is bound to obey.

Therefore, applicants respectfully request that the patent term be adjusted by a number of additional days to account for the Three Years delay under 35 U.S.C. § 154(b)(1)(B). The total number of additional days for the Three Years delay should be the number of days from the date of filing to the date of issuance minus three years. The total PTA should be the USPTO Delay of 819 days plus the Three Years Delay minus the Applicant Delay and Overlapping Time (overlapping time of USPTO Delay and Three Years Delay).

The applicant does not dispute the Office's calculation of the Applicant Delay to be 31 days. The above-referenced application is not subject to a Terminal Disclaimer.

Enclosed is the fee of \$200 pursuant to 37 CFR 1.18(c). Please charge any deficiencies or apply any credits to Deposit Account No.: 50-1070.

Respectfully submitted,

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Date: December 3, 2009
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